widows or widowers — again no reference to claims during marriage. It must, I think, be held that Notice 33 of 1919 is in force at present and that its existence ousts the jurisdiction of the High Court in this case: this opinion may appear to be contrary to certain of the provisions of the Courts Enactment 1925 but that Enactment is itself unsatisfactory and its meaning open to doubt in certain parts.

5. Under these circumstances I cannot do otherwise than dismiss the claim of Wan Kelsom, but I do so with reluctance and only because of Notice 33 of 1919. Since the legal position was obscure, I allow no costs to either party — but I think that the State should refund all fees paid by Wan Kelsom in this claim. She should be told that, if she does not settle this claim amicably with her husband and desires to sue him further, she must do so in the Court of the Chief Kathi.

JUSOH BIN AWANG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Briggs, J.) February 20, 1950]

[Kuala Trengganu — Criminal Appeal No. 10 of 1949]

Criminal Procedure Code, s. 113 — Statement made to Police Officer put to witness to impeach his credit — Practice — Evidence Ordinance, ss. 145 and 155.

In this case in the course of the trial of the accused the Prosecuting Officer asked the Court to refer to a statement made by one of the prosecution witnesses to the Police and the learned President of the Sessions Court allowed this to be done. The statement recorded by the Police was not proved but the statement was marked as an exhibit.

Held, (1) that as the statement was not proved, it could not be proved in evidence; (2) that the learned President had in effect admitted in evidence matter prejudicial to the accused, which was never proved against him and on which he had no opportunity to cross-examine and therefore the conviction must be set aside.

Case referred to :—

(1) *Mutusamy v. Public Prosecutor* (1948) M.L.J. 57.

CRIMINAL APPEAL from Sessions Court.

Che Maidin bin Mohamed Ibrahim (Pleader) for the appellant.

L. A. Massie (D. P. P.) for the respondent.

Briggs, J. : — I allowed this appeal and set aside the conviction and sentence on a question of illegality under Sec. 113 of Criminal Procedure Code.

Mohamed bin Mat Zin, an uncle of the accused and a witness for the prosecution, apparently "failed to come up to his proof". The Prosecuting Officer asked the Court to refer to his statement and the learned President noted, "material difference" and granted "leave". It does not appear, what the Prosecuting Officer was given leave to do but no doubt the reference is to Sec. 155 of the Evidence Enactment. The accused was not furnished with a copy of the statement, but apparently he did not ask for it. The Prosecuting Officer then cross-examined the witness. The witness admitted having made a statement to a particular Police Sergeant.

The learned President's note proceeds :—

"(Certain portion of the statement read — marked A in blue pencil — admitted P1. Intld. M.M.H.).

I did not make that statement which has been read out to me".

No attempt was made to prove the document in question by the evidence of the Sergeant who took it, although he was present. It was, however, marked as an exhibit and included as such in the appeal record. This is a clear illegality.

It has often been stressed by the Court of Appeal and the High Court that, where an alleged statement put to a witness is denied, it must be formally proved — so often, indeed, that I was at first inclined, on reading the learned President's note, to suppose that he must have intended the document to be marked only for identification; but clearly this was not so. If that had been done, and the statement had not thereafter been proved, the attempt to impeach the witness's credit under Sec. 145 of the Evidence Enactment would have failed, but there would have been no irregularity. If the witness was to be believed, his evidence was useless either to the Prosecution or the Defence. If it was not to be believed, it was equally useless. In these circumstances, an application under Sec. 113 can serve no useful purpose. In cases where the witness actively assists the Defence, an application may well be necessary, but that was not the case here.

In effect, the learned President admitted in evidence matter prejudicial to the accused, which was never proved against him, and on which he had no opportunity to cross-examine.

Perhaps the clearest exposition of the law on this matter is that contained in the Judgment of Taylor J. in *Mutusamy v. Public Prosecutor*[1] a judgment with which I respectfully agree, and which all Presidents and Magistrates would be well advised to study.

Conviction set aside.

PUBLIC PROSECUTOR v. TEOH KIM KIEW.

[App. Crim. Juris. (Callow, J.) February 20, 1950]

[Kedah — Criminal Appeal No. 1 of 1950]

Finance Regulations Proclamation, Regulation 5(2) — Admissibility of statement made by an accused person to a Customs Officer.

The point raised by the Public Prosecutor in this appeal was whether the statement made by the respondent to a Customs Officer was rightly rejected by the

learned Magistrate who tried the case. The accused was tried for an alleged offence against the Finance Regulations Proclamation, Regulation 5 (2).

Held, that the statement made by the accused to the Customs Officer was admissible by virtue of Regulation 5 (2) of the Finance Regulations Proclamation and should have been admitted in evidence.

Cases referred to :—

(1) *Tan Shu En & another v. Public Prosecutor* (1948) M.L.J. 196.

(2) *Chong Chin Yuan v. Public Prosecutor* (1949) M.L.J. 262.

CRIMINAL APPEAL from Magistrate's Court.

F. G. Cook (D. P. P.) for the Public Prosecutor.

Mrs. B. H. Oon for the respondent.

Callow, J. : — The short point in this appeal by the Public Prosecutor is whether the statement made by the respondent to the Customs Officer should have been declined by he Court below.

Before the Magistrate the respondent was represented by Mrs. Oon. The prosecution was conducted by a Customs Officer who was also a witness. This I deprecate; it is preferable for the Prosecuting Officer not to be a witness.

Mrs. Oon for the respondent argued that the statement which amounted to a confession having been taken by the Customs Officer after the accused had been detained should be rejected because the Customs Officer acted as a Police Officer. Learned Counsel relied on the case of *Tan Shu En & Anor. v. Public Prosecutor*[1].

But that was a case under the Opium and Chandu Proclamation. I am not prepared to enlarge on this decision. It seems that the attention of the Court below was not drawn to the case of *Chong Chin Yuan v. Public Prosecutor*[2] in which it was held that a statement made to a Customs Officer under section 126 of the Customs Enactment 1936 was admissible. The Finance Regulations Proclamation is for the safeguarding of the economic status of this country, and I am averse to restricting further the already difficult task of enforcing it. As Mr. Cook for the Public Prosecutor emphasised, the object of the prosecution is to strengthen the financial position of this country, and I do not consider interpretation of regulation 5 (2) should be otherwise than what plainly appears.

I have not seen this statement which Mrs. Oon described a confession. It was not suggested that it was obtained by duress, the sole argument advanced to me was that the Customs Officer should be regarded a Police Officer. If it is indeed a contrite confession of a stricken conscience it may be felt that there is little ethic in depriving the soul of the benefit of penitence.

But to decide the point before me I hold the statement admissible by virtue of regulation 5 (2) of the Finance Regulations Proclamation. The judgment of the Court below is set aside, and the case is remitted with the direction to admit the statement. The Magistrate will then decide if there is a case to answer, and if so the defence will be called upon.

Appeal allowed.

TONG YIN FAH v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Jobling and Spenser - Wilkinson, JJ.) February 25, 1950]

[F.M. — Criminal Appeal No. 1 of 1950]

Emergency Regulations, 1948, Regulation 5(1) — Juvenile Courts Ordinance, s. 15 — Whether a "young person" as defined in the Juvenile Courts Ordinance, who is found guilty of an offence under Regulation 5(1), can be sentenced to penal servitude.

In this case the appellant, who was sixteen years of age, was convicted under Regulation 5 (1) of the Emergency Regulations, 1948. He was sentenced to six years' penal servitude. The question considered on the appeal was whether this sentence could be imposed having regard to the Juvenile Courts Ordinance, 1947.

Held, that as the only punishments which could be imposed for an offence against Regulation 5 (1) of the Emergency Regulations, 1948, are death, penal servitude and whipping, the learned trial Judge was correct in not having recourse, before sentencing the appellant, to the provisions of section 15 (2) of the Juvenile Courts Ordinance, 1947 which apply only when the offence for which a young person has been found guilty is punishable with imprisonment.

Case referred to :—

(1) *Public Prosecutor v. Lee Ah Sam (f)* (1949) M.L.J. 236.

CRIMINAL APPEAL.

Appellant in person.

N. L. Cohen for the respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — The appellant, who is sixteen years of age, was convicted under Regulation 5 (1) of the Emergency Regulations, 1948, of consorting with two persons, names unknown, at least one of whom had a revolver in his possession, in circumstances which raised a reasonable presumption that the appellant intended to act with such persons in a manner prejudicial to public safety. Both the assessors expressed the opinion that the appellant was guilty, and the learned trial Judge agreed with them. The appellant was sentenced to six years penal servitude.